

No. 20-315

In the Supreme Court of the United States

JOSE SANTOS SANCHEZ AND SONIA GONZALEZ,
Petitioners,

v.

ALEJANDRO N. MAYORKAS, SECRETARY, UNITED
STATES DEPARTMENT OF HOMELAND SECURITY, ET AL.,
Respondents.

*On Writ of Certiorari to the United States Court of
Appeals for the Third Circuit*

**BRIEF OF HUMAN RIGHTS WATCH AND
ALIANZA AMERICAS AS *AMICI CURIAE* IN
SUPPORT OF PETITIONERS**

Rishi N. Zutshi
Counsel of Record
Lorena Michelen
Morgan A. Miller
CLEARY GOTTlieb STEEN
& HAMILTON LLP
One Liberty Plaza
New York, New York 10006
212-225-2000
rzutshi@cgsh.com
Counsel for Amici Curiae

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	iii
INTEREST OF <i>AMICI</i>	1
SUMMARY OF ARGUMENT.....	5
ARGUMENT	7
I. TPS Recipients Who Are Required to Return to El Salvador from the United States Will Face a Substantial Risk of Death and Other Grave Harm	7
A. Substantial Risk of Homicide	8
B. Substantial Risk of Sexual Violence, Disappearance, Torture, and Other Harms	16
C. Methodology	21
D. Additional Aggravating Factors	24
II. TPS Recipients Required to Return to El Salvador Will Face a Heightened Risk of Death and Other Harms Because of Their Residence in the United States.....	26

A. Salvadoran Nationals Returning from the United States Are More Likely to Become Targets of Criminal Violence Based on Their Appearance, Accent, or Financial Status27

B. Salvadoran Nationals Returning from the United States Are Also More Vulnerable to Becoming Targets of Extrajudicial Violence Because of Assumptions of Criminality31

C. Even a Temporary Stay in El Salvador Poses Substantial Risk for Individuals Returning from the United States Because TPS Recipients Often Return to the Violent Neighborhoods They Originally Fled and Safe Relocation Is Nearly Impossible34

CONCLUSION36

TABLE OF AUTHORITIES

	<u>Page(s)</u>
 <u>Statutes</u>	
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INTEREST OF *AMICI*¹

Amici are organizations with extensive expertise regarding the risks of death and serious harm faced by Salvadoran nationals who have migrated to the United States and have been compelled to return to El Salvador, as well as the conditions in El Salvador that give rise to such risks. *Amici* submit this brief to bring to the Court’s attention facts and data regarding these risks that are relevant to assessing whether the interpretation of Section 244 of the Immigration and Nationality Act² (the “Statute at Issue”) adopted by the Third Circuit in this case is consistent with the overarching purpose of the Temporary Protected Status (“TPS”) statutory scheme enacted by Congress.

Human Rights Watch (“HRW”) is a non-partisan, non-profit human rights organization headquartered in New York. For more than four decades, HRW has investigated, documented, and publicized systematic violations of human rights throughout the world, including torture, sexual violence, and extrajudicial killings. At any given time, HRW is actively researching, reporting, and documenting human rights abuses, as well as advocating for compliance

¹ Pursuant to Supreme Court Rule 37.3, *amici curiae* certify that counsel of record for all parties have consented to the filing of this brief. Pursuant to Rule 37.6, *amici* also certify that no counsel for either party authored this brief in whole or in part and that no person or entity, other than *amici* or their counsel, has made a monetary contribution to its preparation or submission.

² 8 U.S.C. § 1254.

with international human rights standards in more than 90 countries. Central to HRW's work are more than 100 researchers, many of them attorneys, who use an established, proven, and consistent methodology based on gathering factual information from a broad range of sources, with field-based research at its core, and applying international human rights law to these facts.

The reports that HRW prepares based on this methodology have been relied upon by various United States government agencies, including by the Department of Homeland Security in connection with its determinations regarding the TPS designations,³ and by the Department of State in drafting its annual country reports⁴ — including those for El Salvador.⁵

³ *Designation of Republic of South Sudan for Temporary Protected Status*, Federal Register (Oct. 13, 2011), <https://www.federalregister.gov/documents/2011/10/13/2011-26537/designation-of-republic-of-south-sudan-for-temporary-protected-status> (citing HRW reportage on humanitarian crisis in South Sudan to explain the basis for the Government's TPS designation for South Sudan).

⁴ See, e.g., U.S. Dep't of State, *Country Reports on Human Rights Practices for 2015: Sudan* (2016), <https://2009-2017.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=252733#wrapper> (citing HRW reportage on prevalence of systematic mass rape in Sudan and government's blocking of humanitarian aid for citizens, for 2015 Report); U.S. Dep't of State, *2016 Country Reports on Human Rights Practices: Syria* (Mar. 3, 2017), <https://www.state.gov/reports/2016-country-reports-on-human-rights-practices/syria> (citing

HRW's expertise, as relevant here, relates to investigating, analyzing, assessing, and documenting, both historically and presently, the conditions in El Salvador that violate internationally recognized human rights. HRW has been extensively documenting human rights abuses in El Salvador since at least 1982.⁶

In February 2020, HRW published a comprehensive report titled "Deported to Danger," which was the first systematic investigation by any organization, governmental or non-governmental, into the various harms faced by Salvadorans who are compelled by the United States government to return

HRW reportage on use of detention and torture of political opponents by Syrian government, for 2016 Report).

⁵ U.S. Dep't of State, *El Salvador Country Reports on Human Rights Practices* (Feb. 25, 2004), <https://2009-2017.state.gov/j/drl/rls/hrrpt/2003/27897.htm> (relying on HRW reportage on worker conditions and government inaction in El Salvador for the 2004 Country Report); U.S. Dep't of State, *El Salvador Country Reports on Human Rights Practices* (Feb. 28, 2005), <https://2009-2017.state.gov/j/drl/rls/hrrpt/2004/41760.htm> (relying on HRW reportage on child — and especially girl — labor).

⁶ See, e.g., Cynthia Brown, Supplement to the Report on Human Rights in El Salvador (Americas Watch Committee, 1982); James Goldston, Labor Rights in El Salvador (Americas Watch Committee, 1988); *Human Rights Watch World Report 1989*, Human Rights Watch (1989), <https://www.hrw.org/reports/1989/WR89/Elsalva.htm> (documenting the murder of six dissenting Salvadoran priests at the hands of the Salvadoran military).

to El Salvador.⁷ Nearly 1,400 media outlets covered this report in at least 10 languages and across 53 countries.⁸

Alianza Americas (“Alianza”), founded in 2004, is a transnational organization with offices in the United States and El Salvador. It is focused on improving the quality of life of all people in the United States-Mexico-Central America migration corridor by advocating for more informed policymaking in the United States for Central American immigrants and by promoting safer, healthier, and more democratic conditions in these immigrants’ countries of origin. Alianza engages in grassroots education, organizing, advocacy, and

⁷ *Deported to Danger: United States Deportation Policies Expose Salvadorans to Death and Abuse* at 27, Human Rights Watch (Feb. 5, 2020), <https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and> [hereinafter *Deported to Danger*].

⁸ See, e.g., Mary Beth Sheridan, *At Least 138 Salvadorans Deported by the U.S. Were Killed in El Salvador: Rights Group*, The Washington Post (Feb. 5, 2020), https://www.washingtonpost.com/world/the_americas/rights-group-138-salvadorans-deported-by-the-us-were-killed-back-home/2020/02/04/bdf134ee-46d2-11ea-91ab-ce439aa5c7c1_story.html; Ben Fox, *Report: At Least 138 Sent from US to El Salvador Were Killed*, ABC News (Feb. 5, 2020), <https://abcnews.go.com/Politics/wireStory/report-138-us-el-salvador-killed-68768439>; Nicole Acevedo & Adiel Kaplan, *Hundreds Deported from U.S. to El Salvador Have Been Killed or Abused, New Report Says*, NBC News (Feb. 5, 2020), <https://www.nbcnews.com/news/latino/hundreds-deported-u-s-el-salvador-have-been-killed-or-n1126906>.

mobilization around legislation and executive policy regarding TPS certifications. Alianza has worked for more than a decade with Salvadoran TPS holders and organizations and scholars in El Salvador to gauge the country's living conditions, and drawing on that expertise, consulted and advised on HRW's "Deported to Danger" report.

SUMMARY OF ARGUMENT

1. When individuals are compelled to return to El Salvador from the United States, their lives are put in danger. The relevant data, including HRW's own investigative research, reveals *more than two hundred* cases in which such individuals have been killed or suffered grave harm in recent years, with a substantial majority of the killings occurring *within a year* of the victim's return. That data confirms the serious and potentially life-threatening perils that Petitioners would face if they were to return to El Salvador — which is what the decision below in this case requires them and other TPS recipients to do in order to adjust their immigration status. When evaluated in the context of that objective data, the interpretation of the Statute at Issue adopted below simply cannot be reconciled with the legislative purpose of the TPS statutory scheme, which was to protect TPS recipients — such as Petitioners — from facing these perils in their home countries. *Amici* therefore submit in Section I below a detailed summary of the relevant data, including findings from HRW's extensive research into the extent of the killings, sexual abuse, disappearances, torture, and other serious harm faced in recent years by

Salvadoran nationals who have been compelled to return to El Salvador from the United States, as well as the underlying country conditions in El Salvador that have given rise to these risks.

2. The relevant data also shows that Salvadoran nationals who return to El Salvador after residing in the United States for several years or more face unique and heightened risks of being killed, disappeared, tortured, or extorted by criminals, state actors, and “extermination groups” or “death squads.” As this data makes clear, the interpretation adopted below actually turns Congress’s humanitarian objective in enacting the Statute at Issue on its head: that interpretation, if upheld, would effectively subject the Petitioners — who completed the rigorous application process for TPS and received its protections, and subsequently resided in the United States lawfully for two decades — to an increased risk of death or other serious harm. *Amici* therefore submit in Section II below a detailed summary of the data identifying the unique and heightened risks of death and other serious harm that Salvadoran nationals face when compelled to return to El Salvador from the United States.

ARGUMENT

I. **TPS Recipients Who Are Required to Return to El Salvador from the United States Will Face a Substantial Risk of Death and Other Grave Harm**

Amici have conducted extensive investigative research into the specific risks faced by Salvadoran nationals who have been compelled to return to El Salvador from the United States in recent years. The findings from that research with respect to the magnitude of those risks and the underlying conditions in El Salvador from which those risks arise are summarized below. The data below demonstrates that any interpretation of the Statute at Issue requiring the Petitioners and other TPS recipients to return to El Salvador for purposes of adjustment of status will necessarily expose them to the very perils from which the TPS statutory scheme is designed to protect them. Any such interpretation must therefore be rejected because it runs contrary to Congress's fundamental humanitarian objective in enacting the TPS statutory scheme.⁹

⁹ See, e.g., Jack Brooks, *Legislative History of the Immigration Act of 1990 P.L. 101-649 (1990)* (describing "compelling evidence" that the conditions in El Salvador were "so dangerous" that forcing Salvadorans to return there would be "inconsistent with traditional U.S. values concerning human life and human rights").

A. Substantial Risk of Homicide

Between 2013 and 2019, at least 138 Salvadoran nationals who had been compelled to return to El Salvador from the United States were killed within five years of their return.¹⁰ The substantial majority of these killings occurred less than a year after the victim was forced to return to El Salvador, and at least 14 occurred within a week of the victim's forced return.¹¹ In at least 13 of these cases, the victim was reported disappeared or kidnapped before being found dead.¹² While these findings account for the

¹⁰ *Deported to Danger*, *supra* note 7, at 35–36.

¹¹ *Id.*

¹² *See, e.g.*, Kevin Sieff, *When Death Awaits Deported Asylum Seekers*, The Washington Post (Dec. 26, 2018), <https://www.washingtonpost.com/graphics/2018/world/when-death-awaits-deported-asylum-seekers/>; *Man Murdered on Boulevard of Antiguo Cuscatlán Was Going to Visit His Son, but Car Broke Down* (“Hombre asesinado en bulevar de Antiguo Cuscatlán iba a visitar a su hijo, pero se le quedó el carro”), El Blog (Aug. 4, 2018); Héctor Rivas, *Man and His Stepson Killed with AK-47* (“Matan a hombre y a su hijastro con fusil AK-47”), La Prensa Gráfica (Jan. 28, 2018), <https://www.laprensagrafica.com/elsalvador/Matan-ahombre-y-a-su-hijastro-con-fusil-AK-47-20180127-0070.html>; Jaime García, *Saleswoman, Taxi Driver and Newborn, Among Those Killed Today* (“Vendedora, taxista y recién nacida, entre los asesinados hoy”), ElSalvador.com (Sept. 9, 2015), <https://historico.elsalvador.com/historico/162636/vendedorataxista-y-recien-nacida-entre-los-asesinados-hoy.html>; Lilibeth Sánchez & Óscar Iraheta, *Route 42 Minibus Fare Collector Killed During Violent Day* (“Asesinan a un cobrador de microbuses de la Ruta 42 durante jornada violenta”), El Diario Hoy (Apr. 16, 2013), <https://historico.elsalvador.com/historico/104614/asesinan-a-un-cobrador-de-microbuses-de-la-ruta-42-durante-jornada-violenta.html>; *Man Is Killed with a Stone in*

specific cases that HRW has identified and documented, they almost certainly reflect only a fraction of the total incidents of serious harm suffered by Salvadorans forced to return to El Salvador from the United States, even within the limited period studied, for the reasons described in detail below. See *infra* I.D.

A primary factor in these killings is the pervasiveness of criminal violence in El Salvador, which has one of the world's highest homicide rates,¹³ alongside thousands of missing-persons cases.¹⁴ This violence frequently emerges out of gang operations in the country, the scale of which is immense. According to the United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, 247 of the 262 municipalities in El Salvador have gang presence.¹⁵ There are approximately 60,000 gang members in El Salvador.¹⁶

the Canton of El Jute (“Asesinan a hombre con una piedra en el cantón El Jute”), La Prensa Gráfica (Jan. 12, 2013), <https://www.laprensagrafica.com/elsalvador/Asesinan-a-hombre-con-una-piedra-en-el-canton-El-Jute-20130112-0080.html>.

¹³ *Global Study on Homicide*, United Nations Office on Drugs and Crime (July 2019), <https://www.unodc.org/unodc/en/data-and-analysis/global-study-on-homicide.html>.

¹⁴ *Deported to Danger*, *supra* note 7, at 19.

¹⁵ Agnes Callamard (U.N. Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions), El Salvador End of Mission Statement (Feb. 5, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22634>.

¹⁶ *Id.*

The accounts of victims ¹⁷ that *Amici* have documented and compiled illustrate the range and extent of the risks from criminal violence that individuals face upon returning to El Salvador from the United States, as well as the consequences for surviving family members:

- *Murder of Individual Unable to Pay Extortion Demands (“Renta”)*. In December 2011, “Jacinto K.” and his wife had been ordered removed from the United States. In order to avoid permanent bars under United States law from returning to the United States, they chose to depart “voluntarily” with their three children (one of whom is a United States citizen). ¹⁸ HRW interviewed Jacinto in El Salvador in April 2014. In that interview, Jacinto recounted that he and his wife had to borrow money to pay for the family’s plane tickets, and explained:

“I thought starting a small business in [a rural area of El Salvador’s Central Region] was our best bet for paying the loan back quickly. Unfortunately, MS

¹⁷ In the interests of minimizing the risk of harm to survivors, family members, or witnesses, pseudonyms have been used to protect the identity of interviewees, including officials. Where individuals are identified by pseudonyms, the initial reference appears in quotation marks.

¹⁸ *Deported to Danger*, *supra* note 7, at 34, Interview with Jacinto K., El Salvador’s Paracentral Region, Apr. 4, 2014 (pseudonym).

[the Mara Salvatrucha gang] began charging me *renta* shortly after I opened it. I haven't been able to pay down the loan, am barely supporting my family, and worry that I won't be able to keep paying *renta*.”¹⁹

At the time of the interview, Jacinto discounted the power of the MS gang in the area, stating that he felt relatively safe. However, two weeks after the interview, Jacinto was shot dead in broad daylight in public. Following Jacinto's murder, his wife and children have relocated multiple times to different locations in the country in search of safety, but reported that the MS gang has continued to locate them.²⁰

- *Gang Killing of Individual Who Previously Attempted to Flee to the United States.* “Joaquín” was a young man who fled El Salvador because he had been threatened by members of the MS gang. Although Joaquín was not believed to be involved with any gangs, he was deported from the United States in 2017. Upon returning to El Salvador, he was killed by suspected gang members later that same year. In an interview with HRW, his uncle, “José Miguel C.,” stated that Joaquín had been continuously threatened by MS gang

¹⁹ *Id.*

²⁰ *Id.* at 35.

members and that the “same members who killed him had threatened him beforehand.”²¹

- *Murder of Individual Awaiting Documentation for Admission to the United States.* Mario Enrique Sandoval Gómez, who was approximately 30 years old, was shot dead in June 2017 at his home after being convinced to open the door by two individuals pretending to be police officers. Sandoval Gómez had been deported from the United States two years earlier, but was not suspected of any gang affiliation. His wife, “who was at home on the night of the murder,” had legally applied for him to return to the United States, and they were waiting to receive their documents, so that the couple could join her parents in the United States.²²

Another factor contributing to the dangerous conditions in El Salvador is the Salvadoran government’s inability to enforce the rule of law. Historically, state authorities in El Salvador have been largely ineffective in protecting the population from criminal violence.²³ In addition to a lack of

²¹ *Id.* at 33, Interview with José Miguel C., El Salvador’s Paracentral Region, Mar. 29, 2019 (pseudonym).

²² *San Miguel Deportee Was Killed While He Was Waiting for a US Migratory Pardon* (“Migueleno deportado fue asesinado mientras esperaba perdón migratorio de EUA”), La Prensa Gráfica (June 29, 2017), <https://www.laprensagrafica.com/elsalvador/Migueleno-deportado-fue-asesinado-mientras-esperaba-perdon-migratoriode-EUA-20170629-0048.html>.

²³ *Deported to Danger*, *supra* note 7, at 19.

resources and prohibitively large caseloads, there are credible accounts of police and other state authorities being monitored, threatened, and in some cases infiltrated by gangs.²⁴ State authorities are further hampered by a culture of widespread impunity for the failure of government officials to carry out their responsibilities.²⁵ Not only are Salvadoran security forces unable to provide effective protection against criminal violence, in many cases they themselves have also committed extrajudicial executions, sexual assaults, enforced disappearances, and torture.²⁶ For example, in 2019 alone, the Central American University's Human Rights Institute received seven reports of elite Salvadoran police units burning victims.²⁷ Separately, in August 2019, the Lethal Force Monitor reported that Salvadoran officials killed 1,626 people between 2011 and 2017, including 48 boys, four women, and 355 men in 2017 alone.²⁸

²⁴ *Id.* at 73 (relying, *inter alia*, on interviews with 41 officials from the Salvadoran Attorney General's Office ("FGR"), IML, National Civilian Police ("PNC"), and Local Office for Attention to Victims ("OLAV") in nine departments, El Salvador, between November 2018 and December 2019).

²⁵ *Id.*; see generally Karen Musalo, *El Salvador—A Peace Worse than War: Violence, Gender and a Failed Legal Response*, 30 *Yale J. L. & Feminism* 3 (2019).

²⁶ *Deported to Danger*, *supra* note 7, at 19.

²⁷ Central American University Institute of Human Rights, Press Releases, <http://www.uca.edu.sv/idhuca/noticias/comunicados-de-prensa/#more-587>.

²⁸ Adrian Bergmann, et al., *Monitor of Use of Lethal Force in Latin America: A Comparative Study of Brazil, Colombia, El Salvador, Mexico and Venezuela*, Lethal Force Monitor (2019),

A related source of violence in El Salvador are extermination groups or death squads, which according to scholars and intergovernmental agencies, are deeply rooted in the country's security forces.²⁹ These groups have been present in El Salvador since at least the 1980s, when civil war plagued the country, and UN agencies, human rights observers, the press, and Salvadoran government all acknowledge that these groups remain active today.³⁰

<http://www.monitorfuerzaletal.com/Executive-Monitor-English.pdf>.

²⁹ Cynthia Arnson, *Window on the Past: A Declassified History of Death Squads in El Salvador*, *Death Squads in Global Perspective: Murder with Deniability* (Bruce Campbell, et al. eds., 2000).

³⁰ Cecilia Jimenez-Damary (Special Rapporteur), Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons on Her Visit to El Salvador, U.N. Doc A/HRC/38/39/Add.1 (Apr. 23, 2018); *see also* Sarah Kinosian, *El Salvador's Security Policy Is Increasing Extrajudicial Killings and Abuse*, Latin American Working Group (LAWG) (Feb. 12, 2016), <https://www.lawg.org/el-salvadors-security-policy-is-increasing-extrajudicial-killings-and-abuse/>; U.S. Dep't of State, *El Salvador 2018 Human Rights Report* at 2 (Mar. 13, 2019), <https://www.state.gov/wp-content/uploads/2019/03/EL-SALVADOR-2018.pdf>; U.S. Dep't of State, *El Salvador 2017 Human Rights Report* at 10 (Apr. 20, 2018), https://www.justice.gov/sites/default/files/pages/attachments/2018/04/24/dos-hrr_2017_el_salvador.pdf (stating that "559 members of the PNC had been arrested for crimes including membership in extermination groups"); Ricardo Flores & Gabriel García, *Six Police Members of Extermination Group Sentenced* ("Condenan a 6 policías miembros de grupo de exterminio"), *La Prensa Gráfica* (Feb. 10, 2018), <https://www.laprensagrafica.com/elsalvador/Condenan-a-seis-policias-miembros-de-grupo-deexterminio-20180209-0135.html>.

Press accounts have identified multiple cases in which individuals who were compelled to return to El Salvador from the United States were killed in circumstances consistent with the methods employed by such extermination groups and death squads.³¹ For example:

- In the El Zapote neighborhood of Jucuarán municipality in May 2015, 15 to 20 “men dressed in black and camouflage” entered a home “simulating a police operation,” according to a press report. They killed a 32-year-old deportee in the home’s hallway and took the other six to line them up in the street before shooting dead four face down and two face up.³²
- In the El Jícaro neighborhood of Lolotique municipality in June 2017, subjects dressed in black simulating a police operation killed a man deported from the United States in 2015 who had non-gang-related tattoos, at his home.³³

³¹ *Deported to Danger*, *supra* note 7, at 38 n.118.

³² Beatriz Calderon, et al., *Two Massacres Leave 10 Gang Members Dead in Usulután* (“Dos masacres dejan 10 pandilleros muertos en Usulután”), La Prensa Gráfica, <https://www.laprensagrafica.com/elsalvador/Dosmasacres-dejan-10-pandilleros-muertos-en-Usulután-20150510-0023.html>.

³³ *Deported to Danger*, *supra* note 7, at 83–84, Interview with José Miguel C., El Salvador’s Paracentral Region, Mar. 29, 2019 (pseudonym). As explained below, tattoos pose a significant risk of death or harm in El Salvador, as they are often interpreted,

B. Substantial Risk of Sexual Violence, Disappearance, Torture, and Other Harms

Salvadoran nationals who are forced to return to El Salvador from the United States also face the risk of suffering other serious harm.

First, there is a substantial risk that such individuals, and Salvadoran women in particular, will suffer sexual violence. El Salvador has one of the highest rates of sexual violence in the world,³⁴ and the United States Department of State has specifically found that “rape and other sexual crimes against women were widespread” in each of its country reports for El Salvador spanning back to 2013.³⁵ The incidence of killings and sexual violence is so widespread that each of El Salvador’s 262 municipalities registered at least a homicide or sexual crime between 2013 to 2018, with many specific neighborhoods registering multiple homicides and sexual crimes annually.³⁶ During that same time period, even the three rural municipalities with populations of less than 2,600 that registered no

rightly or wrongly, as a symbol of gang affiliation. *See infra* II.B.

³⁴ *Id.* at 4–5, 19.

³⁵ *See, e.g.*, U.S. Dep’t of State, *2016 Country Reports on Human Rights Practices: El Salvador* (Mar. 3, 2017), <https://www.state.gov/reports/2016-country-reports-on-human-rights-practices/el-salvador/>.

³⁶ *Deported to Danger*, *supra* note 7, at 57–58.

murders, still registered multiple sexual crimes.³⁷ In 2018, a public survey found that approximately 65,000 individuals were survivors of rape or sexual assault.³⁸

These risks are illustrated by the account of one victim, “Angelina N.,” documented by HRW in the course of its research. Angelina left El Salvador when she was 20 years old, to escape regular physical abuse by the father of her 4-year-old daughter.³⁹ Fleeing to the United States alone, she was apprehended at the border and detained.⁴⁰ After being informed that her daughter was hospitalized in El Salvador, she chose not to appeal the United States government’s decision to deport her in September 2014.⁴¹ Upon her return to El Salvador, “Mateo O.”—a neighbor who was a gang member and who had previously made persistent sexual advances toward Angelina—continued to pursue and threaten her, inciting his fellow gang members to do so, as well.⁴² Despite Angelina’s repeated rejection of Mateo’s advances, his behavior continued and escalated. In October 2014, Mateo raped Angelina when she was at home alone, only one month after

³⁷ *Id.* at 57 n.189.

³⁸ *Id.* at 42 n.136.

³⁹ *In re Matter of (name withheld for security)*, U.S. Dep’t of Justice, Exec. Office for Immigration Review (date withheld for security).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

her deportation from the United States.⁴³ Angelina described her experience to a HRW researcher as follows:

I just opened the door, expecting it to be [my daughter returning home], but it was [Mateo]. He forced open the door because I started trying to close it on him. [Mateo] came inside and forced me to have sex with him for the first time. He took out his gun . . . I was so scared that I obeyed . . . When he left, I started crying. I didn't say anything at the time, or even file a complaint to the police. I thought it would be worse if I did because I thought someone from the police would likely tell [Mateo] . . . I didn't want anyone to know what was happening . . . He told me he was going to kill my father and my daughter if I reported the [original and three subsequent] rapes, because I was "his woman." [He] hit me and told me that he wanted me all to himself.⁴⁴

The following month, Mateo returned to Angelina's home when her daughter was at home.⁴⁵

⁴³ *Id.*

⁴⁴ *Deported to Danger*, *supra* note 7, at 46, Interview with Angelina N., United States East Coast, Feb. 22, 2019 (pseudonym).

⁴⁵ *In re Matter of (name withheld for security)*, U.S. Dep't of Justice, Exec. Office for Immigration Review (date withheld for

Mateo warned Angelina’s daughter to stay in the living room “watching cartoons” and to “not to go to the bedroom.”⁴⁶ He then “dragged [Angelina] to the bedroom, took out a gun, and told [her] to be quiet or [she] would see [her] daughter die before [her] eyes.”⁴⁷ After he left, Angelina cried but did not tell the authorities, reporting to an immigration court that “sometimes it is worse to tell the police because they do not help.”⁴⁸ Angelina was raped twice more by Mateo before fleeing again — this time with her daughter — to the United States.⁴⁹

Individuals compelled to return to El Salvador from the United States also face substantial risk of

security); *see also* *Deported to Danger*, *supra* note 7, at 46, Interview with Angelina N., United States East Coast, Feb. 22, 2019 (pseudonym).

⁴⁶ *In re Matter of (name withheld for security)*, U.S. Dep’t of Justice, Exec. Office for Immigration Review (date withheld for security).

⁴⁷ *In re Matter of (name withheld for security)*, U.S. Dep’t of Justice, Exec. Office for Immigration Review (date withheld for security); *see also* *Deported to Danger*, *supra* note 7, at 46–47, Interview with Angelina N., United States East Coast, Feb. 22, 2019 (pseudonym).

⁴⁸ *In re Matter of (name withheld for security)*, U.S. Dep’t of Justice, Exec. Office for Immigration Review (date withheld for security); *see also* *Deported to Danger*, *supra* note 7, at 47, Interview with Angelina N., United States East Coast, Feb. 22, 2019 (pseudonym).

⁴⁹ *In re Matter of (name withheld for security)*, U.S. Dep’t of Justice, Exec. Office for Immigration Review (date withheld for security); *see also* *Deported to Danger*, *supra* note 7, at 47, Interview with Angelina N., United States East Coast, Feb. 22, 2019 (pseudonym).

harm as a result of disappearances, torture, and other violence. Among the cases identified by HRW in its research between 2013 and 2019, more than 20 individuals were disappeared or tortured within five years of their return to El Salvador.⁵⁰ At least 33 individuals were threatened with death after their forced return to El Salvador from the United States.⁵¹ Of these 33 individuals, three were beaten, three were shot and injured, 13 were extorted by suspected gang members, and 14 were subsequently killed (including six of those who had been extorted).⁵²

⁵⁰ See, e.g., *Young Dancer Who Lived in Las Palmas Community Found Dead* (“Encuentran muerte a joven bailarina que vivía en Comunidad Las Palmas”), *El Diario de Hoy* (July 17, 2017); *25 People Have Disappeared This Year* (“25 privados de libertad van este año en Usulután”), *La Prensa Gráfica* (Mar. 3, 2014), <https://www.laprensagrafica.com/elsalvador/25-privados-de-libertad-van-este-ano-en-Usulután-20140303-0116.html>; Jaime López, *Youth Arrived to El Salvador from the United States and Disappeared in Sensuntepeque* (“Joven llegó a El Salvador de EE.UU. y desapareció en Sensuntepeque”), *ElSalvador.com* (Sept. 23, 2018), <https://www.elsalvador.com/noticias/nacional/joven-llego-a-el-salvador-de-ee-uu-y-desaparecio-en-sensuntepeque/521291/2018/>.

⁵¹ See, e.g., *Deported to Danger*, *supra* note 7, at 48, Interview with Bernardo A., El Salvador’s Central Region, Jan. 25, 2019 (pseudonym); Interview with Nelson E., El Salvador’s (region withheld for security), Jan. 26, 2019 (pseudonym); Interview with Bartolo A., El Salvador’s (region withheld for security) (pseudonym).

⁵² See, e.g., David Marroquín, *Three Detained After Attack and Persecution* (“Tres detenidos tras ataque y persecución”), *El Diario de Hoy* (Jan. 17, 2013), <https://historico.elsalvador.com/historico/100235/tres-detenidos-tras-ataque-y-persecucion.html>;

C. Methodology

The findings summarized above are based on extensive research conducted by HRW in El Salvador, Mexico, and the United States.⁵³ To compile this data, HRW conducted:

- multi-session interviews with more than 50 directly impacted victims and/or surviving relatives or friends of victims;⁵⁴
- interviews with 41 officials in El Salvador who worked in different departments at local

Jenny Ventura, et al., *Nine-Year-Old Girl Found Murdered* (“Encuentran asesinada a niña de 9 años”), *El Diario de Hoy* (Jan. 4, 2015), <https://historico.elsalvador.com/historico/143432/encuentran-asesinada-a-nina-de-9-anos.html>; *Three Farmers Killed in Moncagua* (“Asesinan en Moncagua a tres agricultores”), *La Prensa Gráfica* (June 17, 2017), <https://www.laprensagrafica.com/elsalvador/Asesinan-en-Moncagua-a-tres-agricultores-20170617-0090.html>; *Two Soldiers Killed in Front of SITRAMSS Station* (“Matan a dos soldados frente a estación del SITRAMSS”), *La Prensa Gráfica* (June 22, 2015), <https://www.laprensagrafica.com/elsalvador/Matan-a-dos-soldados-frente-a-estacion-del-SITRAMSS-20150622-0044.html>; José Napoleón Morales, *Suspected Gang Members Kill a Man and Injure His Wife* (“Supuestos pandilleros asesinan a un hombre y hieren de bala a su esposa”), *La Página* (June 22, 2015); Lilibeth Sánchez & Diana Escalante, *Police Register 32 Murders Between Friday and Sunday* (“Policía registro 32 asesinatos entre el viernes y el domingo”), *El Diario de Hoy* (June 9, 2014), <https://historico.elsalvador.com/historico/129747/policia-registro-32-asesinatos-entre-el-viernes-y-el-domingo.html>.

⁵³ *Deported to Danger*, *supra* note 7, at 12.

⁵⁴ *Id.*

district attorney's offices, forensic units, and police agencies that focus on investigating homicides;⁵⁵ and

- interviews with 31 other knowledgeable individuals, including authorities at the migration agency, local child migrant protection offices, the armed forces of El Salvador, criminal sentencing courts, and victim's assistance offices, as well as researchers, journalists and non-profit organizations.⁵⁶

Within the United States, HRW interviewed individuals and families that were referred by relevant individuals in El Salvador and the United States, and visited three of the most common counties of residence of Salvadorans in the United States.⁵⁷ HRW also contacted and obtained information from reporters, immigration attorneys, social service providers, and organizers in order to ask them to further reach out to their networks to inquire about persons who had either been recently deported or harmed after deportation.⁵⁸ HRW

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 13.

⁵⁸ *Id.* The three most common counties of residence for Salvadorans in the United States are Los Angeles County, California; Prince George's County, Maryland; and Harris County, Texas. See Allison O'Connor, et al., *Central American Immigrants in the United States*, Migration Policy Institute (Aug. 15, 2019), <https://www.migrationpolicy.org/article/central-american-immigrants-united-states>.

conducted interviews in Spanish or English, without interpreters.⁵⁹

In addition to conducting interviews, HRW took four additional steps that were designed both to identify possible cases of harms experienced by Salvadoran nationals who had recently been compelled to return to El Salvador from the United States and to verify information learned during the interviews:

- HRW compiled and studied municipal-level data on adult and child homicides and other crimes in El Salvador, and also compiled a database of public reports of child disappearances.⁶⁰
- HRW systematically searched the local Salvadoran printed press in order to read and analyze relevant articles describing violence or other relevant aspects of neighborhood life in El Salvador.
- HRW analyzed the digitized decisions of El Salvador's 24 criminal sentencing tribunals.
- HRW reviewed 14 Salvadoran news outlets in order to analyze any reporting on killings and harming of Salvadoran deportees.⁶¹

⁵⁹ *Deported to Danger*, *supra* note 7, at 14.

⁶⁰ *Id.* at 15–16.

⁶¹ *Id.* at 16–17.

At various points throughout this process, HRW also consulted with knowledgeable scholars and experts, including the professional staff of Alianza.

D. Additional Aggravating Factors

Notwithstanding the robustness of HRW's research, there are several factors that lead *Amici* to conclude that the individual cases of harm identified in the course of that research significantly underrepresent the total number of cases and understate the actual risks.

First, forensic reports and media coverage of killings frequently omit whether a victim was a deportee or had otherwise been compelled to return to the country from the United States. Salvadoran state protocols do not require the authorities or the Salvadoran prosecutor's office to inquire into the migration status of victims. One prosecutor explained to HRW that his office does "not give importance" to a victim's migratory status because "[i]t is not relevant."⁶² Separately, as a forensic doctor confirmed, family members of victims are frequently reluctant to acknowledge the victim's migratory status because of societal stigma associated with having been deported from the United States.⁶³

⁶² *Id.* at 39, Interview with FGR prosecutor, El Salvador's Eastern Region, Nov. 6, 2018.

⁶³ *Id.* at 40, Interview with IML doctor, El Salvador's Eastern Region, Jan. 22, 2019.

In addition, the number of killings of individuals who have been forced to return to El Salvador from the United States is likely to be undercounted because homicides in El Salvador are generally undercounted. For example, HRW's analysis of state and press accounts demonstrated systematic undercounting of cases involving female victims, people killed in areas where crimes are more likely to go unreported including particularly violent neighborhoods, isolated rural areas, and areas where gangs or authorities do not permit journalists to enter, and people killed in the custody of Salvadoran authorities.⁶⁴ Furthermore, many of the other crimes identified in HRW's research, including crimes of sexual violence, gang-related crimes, and crimes committed by state actors or extermination groups, are infrequently reported and unlikely to be investigated or prosecuted. For example, one credibly recent study suggests that less than five percent of sexual crimes were reported to Salvadoran authorities in 2018.⁶⁵

⁶⁴ *Id.*

⁶⁵ See University Institute of Public Opinion, ("Instituto Universitario de Opinión Pública, IUDOP"), Press Bulletin (Boletín de prensa año XXXII, No. 4, 2018), IUDOP included in its 2018 survey this question: "Have you been a direct victim of some type of incident like a robbery, extortion or renta, threats or other criminal act during the year?" ("¿Ha sido usted víctima directa de algún hecho como robo, extorsión o renta, amenazas o de otro acto delincuenciales durante el año?") In response to this question, 1 percent of those who responded affirmatively specified they had been raped or sexually assaulted. Assuming a population of 6.5 million, 1 percent would extrapolate to

Finally, the conditions giving rise to pervasive violence in El Salvador are likely to have been further aggravated by recent events, including the Covid-19 pandemic and the hurricanes Eta and Iota from late 2020. The combination of the pandemic and these recent natural disasters has deepened the “profound humanitarian crisis” in El Salvador and has been aggravated by a state response that has generally failed to reach the areas most in need of assistance.⁶⁶

II. TPS Recipients Required to Return to El Salvador Will Face a Heightened Risk of Death and Other Harms Because of Their Residence in the United States

Not only would the Third Circuit’s construction of the Statute at Issue undo protections that Congress intended to provide to TPS recipients, but it would have the perverse effect of exposing TPS recipients to an even greater risk of harm when they are compelled to return to El Salvador to adjust their immigration status *as a result of their extended,*

roughly 65,000 rape or sexual assault victims. In 2018, the Salvadoran prosecutor’s office, FGR, documented 3,149 reports of sexual crimes, which is 4.8 percent of 65,000.

⁶⁶ *The Pandemic, Corruption and Hurricanes: Central America Confronts a Humanitarian Crisis*, Alianza Americas (Nov. 19, 2020), <https://www.alianzaamericas.org/blog/central-america-hit-hard-by-environmental-degradation-the-pandemic-corruption-and-hurricane-season-faces-a-profound-humanitarian-crisis/?lang=en>.

*lawful residence in the United States.*⁶⁷ Petitioners, like most Salvadoran TPS recipients in the United States, have lived in the United States for decades. Salvadoran nationals who are compelled to return to El Salvador from the United States, particularly after an extended period in the United States, face a heightened risk of death or harm because they are easily identifiable on account of their style of clothing, way of speaking, and actual or perceived financial resources.⁶⁸ Moreover, TPS recipients are often unaware of the unspoken rules to which local Salvadorans adhere in order to protect themselves from gangs, extermination groups, or corrupt authorities.⁶⁹

A. Salvadoran Nationals Returning from the United States Are More Likely to Become Targets of Criminal Violence Based on Their Appearance, Accent, or Financial Status

Numerous accounts of victims, survivors, and state authorities make clear that Salvadoran nationals returning from the United States are more susceptible to criminal violence because of their actual or perceived financial status and incomprehension of social rules. One director of an agency providing aid to deported persons highlighted the manner in which Salvadorans who have lived for

⁶⁷ See generally *Deported to Danger*, *supra* note 7, at 46–47 (“Angelina M.”).

⁶⁸ See *id.* at 88.

⁶⁹ See *id.*

a long time in the United States often become easily identifiable: “At the beginning, there’s no problem. But as they’re noticed—their clothing, their accent, their money—the gang finds interest.”⁷⁰ “Yeshua O.’s” experience illustrates this point. After having fled to the United States for nearly two decades from a particularly violent neighborhood in El Salvador, Yeshua O. recounted that within weeks of being deported to El Salvador, he struggled to acclimate to rules over whether he should wear “certain shoes, certain colors and certain hairstyles.”⁷¹ The most basic decisions governing one’s appearance could be interpreted as an indicia of gang affiliation and inadvertently place returning TPS recipients in danger: “It’s confusing here. I’d always had a military style, but in [United States immigration] detention, they [other detainees] told me to keep my hair longer. . . . I guess the military style is linked with one of the gangs.”⁷²

The sister of “Baltazar G.,” a man who had been deported in January 2012 after living in the United States for 10 years, reported to HRW that his style of dress was dangerous: “After living so long there [in the United States], he dressed differently. Loose. It attracted gang members’ attention here. I told him

⁷⁰ *Id.*, Interview with aid director for persons deported from Mexico and the United States for international non-profit, El Salvador’s Central Region, Mar. 28, 2019.

⁷¹ *Id.*, Telephone interview with Yeshua O., El Salvador’s Central Region, Nov. 13, 2018 (pseudonym).

⁷² *Id.*

to dress differently.”⁷³ “Bernardo A.,” in his late forties, first fled to the United States as a teenage child to avoid forced conscription into the guerilla forces.⁷⁴ Having lived most of his life since then in the United States, he was deported in December 2017 and recounts his experience upon arrival: “I was at church, and people wanted to beat me. So, I left. I think they didn’t like the way I talked. I didn’t speak Spanish well anymore. I’d learned English . . . and no longer spoke Spanish well.”⁷⁵

Moreover, Salvadoran nationals returning from the United States are often targets of extortion on account of their actual or perceived greater financial resources. Many individuals have provided firsthand accounts to HRW that their unwillingness to succumb to gang extortion or other demands (motivated, they believed, by their perceived wealth resulting from their extended residence in the United States) put their lives and the lives of their family members at risk.⁷⁶ Several police officers reported to

⁷³ *Id.*, Interview with Baltazar’s sister and nephew, El Salvador’s Central Region, Dec. 1, 2018 (pseudonym).

⁷⁴ *Id.*, Interview with Bernardo A., El Salvador’s Central Region, Jan. 25, 2019 (pseudonym).

⁷⁵ *Id.* at 89, Interview with Bernardo A., El Salvador’s Central Region, Jan. 25, 2019 (pseudonym).

⁷⁶ *Id.* at 89–90, Interview with Norman S., El Salvador’s (region withheld for security), first quarter of 2019 (exact date withheld for security) (pseudonym); Interview with Matías J., United States East Coast, Mar. 1, 2019 (pseudonym); Telephone interview with Ana P., Mar. 5, 2019 (pseudonym); Interview with Elías F., United States (region withheld for security), first quarter of 2019 (exact date withheld for security) (pseudonym);

HRW that failure to pay extortion fees was the most common factor in the homicides of deported former United States long-term residents.⁷⁷ One police investigator told HRW that among his recent homicide cases were several involving deportees who had been extorted:

I can think of three cases. One was in El Junquillo, I think in 2016 . . . He was deported and was killed. The investigation showed that the gang extorted him. The second was in [neighborhood name withheld], likewise because of extortion. He set up a business, a cereal products store, and they killed him. That was in 2018. The third was in [municipality name withheld], but I don't remember the neighborhood. It was the same: the person was deported with a little money, set up a business, and [the demand for] *la renta* came.⁷⁸

and interview with PNC officer, El Salvador's Paracentral Region, Mar. 25, 2019.

⁷⁷ *Id.* at 90, Interview with PNC Investigator, El Salvador's Western Region, Jan. 24, 2019; Interview with police person, El Salvador's Paracentral Region, Mar. 25, 2019; Interview with city hall based OLAV official, El Salvador's Central Region, Jan. 11, 2019; Interview with aid director for persons deported from Mexico and the United States for international non-profit, El Salvador's Central Region, Mar. 28, 2019.

⁷⁸ *Id.* at 90, Interview with police officer, El Salvador's Western Region, Jan. 24, 2019; *see also* David Marroquín, *Violence Takes the Lives of 64 People in the Last Four Days* ("Violencia

As illustrated by the account of the murder of Jacinto K., Salvadoran nationals returning from the United States face a compounding risk of death when they do not capitulate to threats of extortion.⁷⁹

B. Salvadoran Nationals Returning from the United States Are Also More Vulnerable to Becoming Targets of Extrajudicial Violence Because of Assumptions of Criminality

Among Salvadoran officials is a common assumption that individuals deported from the United States are active gang members who were convicted of violent crimes while in the United States.⁸⁰ These assumptions expose Salvadoran nationals returning from the United States to additional risk, even if the individuals themselves have no record of criminal conduct. One ranking police officer explained in an interview, “[w]e think that if a person wasn’t wanted in the United States,

acaba con la vida de 64 personas en los últimos cuatro días”), *El Diario de Hoy* (Mar. 15, 2018), <https://www.elsalvador.com/noticias/nacional/violencia-acaba-con-la-vida-de-64-personas-en-ultimos-cuatro-dias/460839/2018/>; *see also* David Marroquín, *2,841 Murders Registered in the Year, with 297 in September* (“Registran 2,841 asesinatos en el año, septiembre con 297 homicidios”), *El Diario de Hoy* (Sept. 29, 2014), <https://www.elsalvador.com/noticias/nacional/registran-2841-asesinatos-en-el-ano-septiembre-con-297-homicidios/136337/2014/> (both noting the killings of two other long-term residents from the United States).

⁷⁹ *See supra* I.A.

⁸⁰ *Id.* at 30, Interview with PNC, El Salvador’s Paracentral Region, Nov. 5, 2018.

it must be because the deported person is bad.”⁸¹ Because security officials involvement in extrajudicial executions and excessive use of force is often linked to government efforts to combat gangs, TPS recipients returning from the United States to El Salvador will face a heightened risk of being targeted based on assumptions that their departure resulted from criminal activity.⁸²

Additionally, although commonplace in the United States and often obtained for sentimental or artistic reasons, tattoos in El Salvador have long been viewed with stigma and can pose substantial risk of death or other serious harm to individuals required to return to El Salvador from the United States because gangs, state authorities, and death squads typically interpret tattoos as symbols of gang affiliation.⁸³ Several Salvadoran officials⁸⁴ expressed

⁸¹ *Id.* at 31, Interview with police commissioner, El Salvador’s Paracentral Region, Nov. 5, 2018.

⁸² See Callamard, *supra* note 15; Adrian Bergmann, et al., *Monitor of Use of Lethal Force in Latin America: A Comparative Study of Brazil, Colombia, El Salvador, Mexico and Venezuela*, Lethal Force Monitor (2019), <http://www.monitorfuerzaletal.com/Executive-Monitor-English.pdf>.

⁸³ *Deported to Danger*, *supra* note 7, at 91–92; see also *No Place to Hide: Gang, State, and Clandestine Violence in El Salvador*, The International Human Rights Clinic, Harvard Law School (2007), <https://static1.squarespace.com/static/5b3538249d5abb21360e858f/t/5cabca6ce4966bf580ea3471/1554762350561/No+Place+to+Hide+Cavallaro+2007.pdf>.

⁸⁴ *Deported to Danger*, *supra* note 7, at 92, Interview with FGR prosecutor, El Salvador’s Paracentral Region, Mar. 29, 2019; *id.*, Interview with FGR prosecutor, El Salvador’s Eastern Region, Jan. 22, 2019; *id.*, Interview with IML examiners, El Salvador’s

their belief that tattoos were the most common factor among deportees who were killed. A doctor from the *Instituto de Medicina Legal* (“IML”), a national forensic body conducting various examinations and autopsies at crime scenes and for criminal investigations, stated that:

What I have noticed about those murdered after their deportation is nearly all have tattoos. Among them, they have artistic tattoos that do not allude to gangs. Yet, gangs will kill them, as will others.⁸⁵

Western Region, Jan. 24, 2019; *id.*, Interview with IML investigators, El Salvador’s Western Region, Jan. 7, 2019; *id.*, Interview with IML examiner, El Salvador’s Eastern Region, Nov. 26, 2018.

⁸⁵ *Id.* at 92–93, Interview with IML doctor, El Salvador’s Eastern Region, Nov. 26, 2018.

C. Even a Temporary Stay in El Salvador Poses Substantial Risk for Individuals Returning from the United States Because TPS Recipients Often Return to the Violent Neighborhoods They Originally Fled and Safe Relocation Is Nearly Impossible⁸⁶

For all the aforementioned reasons, temporary residence in El Salvador in order to adjust to legal permanent residence still creates a grave danger for Salvadoran TPS recipients, and safe relocation is often impossible, as gang members, authorities, and residents view new arrivals with suspicion.⁸⁷ Because gangs operate in most of El Salvador's municipalities⁸⁸ and long-term residents of the United States returning to El Salvador are not always aware of local social rules, TPS recipients returned to El Salvador may experience even greater risks than the dangers they previously fled.⁸⁹

For instance, Salvadoran press accounts revealed three male deportees' attempts to hide in new neighborhoods before they were killed or

⁸⁶ See Vickie Knox, *An Atomised Crisis: Reframing Displacement Caused by Crime and Violence in El Salvador*, Internal Displacement Monitoring Centre (Sept. 2018), <http://www.internal-displacement.org/sites/default/files/inline-files/201809-el-salvador-an-atomised-crisis-en.pdf>; *Deported to Danger*, *supra* note 7, at 51–56.

⁸⁷ *Deported to Danger*, *supra* note 7, at 70.

⁸⁸ See Callamard, *supra* note 15.

⁸⁹ See *Deported to Danger*, *supra* note 7, at 86.

disappeared.⁹⁰ One District Attorney reported that “depending on the deportee’s [neighborhood], we do see changing addresses as a risk [for death].”⁹¹ For example, “Nelson E.,” after being deported from the United States in October 2014, tried living on his own in a new neighborhood but was soon forced to flee:

When I got back [in 2014], I didn’t want to live with my mom . . . I had work. But one time, people arrived to rob me. They wanted my DUI [government issued, photo identification]. They told me I couldn’t be there. They told me to remove myself from there. They said they would disappear me if I stayed . . . so I went back to my mom. This is the risk here. You cannot go where they do not know you.⁹²

⁹⁰ Francisco Narváez, *Youth Murdered Who Had Recently Been Deported* (“Asesinan a joven que había sido deportado recientemente”), El Blog (June 1, 2017), <https://web.archive.org/web/20170706063133/http://elblog.com/noticias/registro-42799.html>; Flor Lazo, *Relief Teams Search for Missing Man* (“Cuerpos de socorro buscan a hombre extraviado”), La Prensa Gráfica (Sep. 17, 2017), <https://www.laprensagrafica.com/elsalvador/Cuerpos-de-socorro-buscan-a-hombre-extraviado-20170917-0028.html>; *Extortion and Murder Afflicts El Carmen* (“Extorsiones y asesinatos afligen a El Carmen”), El Diario del Hoy (Feb. 23, 2013), <https://historico.elsalvador.com/historico/101223/extorsiones-y-asesinatos-afligen-a-el-carmen.html>.

⁹¹ *Deported to Danger*, *supra* note 7, at 69, Interview with FGR prosecutor, El Salvador’s Paracentral Region, Nov. 5, 2018.

⁹² *Id.* at 70, Interview with Nelson E., El Salvador’s (region withheld for security), Jan. 26, 2019 (pseudonym).

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In light of the above risk factors, it would be fundamentally illogical for Congress to create a humanitarian relief scheme under which individuals who have fostered family and community ties in the United States — ties that may make the United States a TPS holder’s “home” as defined in international human rights law ⁹³ — would be required to face the substantial risks entailed by returning to a country, like El Salvador, that has been designated with TPS status.

CONCLUSION

The facts and data set forth above demonstrate a substantial risk of death and other serious harm to

⁹³Article 12(4) of the ICCPR requires that “no one shall be arbitrarily deprived of the right to enter his own country,” and the Human Rights Committee has found that the definition of “one’s own country” is broader than the concept of a person’s country of nationality. U.N. Human Rights Comm., General Comment No. 27, Art. 12, Freedom of Movement, U.N. Doc, CCPR/C/21/Rev.1/Add.9 (1999), Para. 20. Article 17 of the ICCPR provides that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy . . . home or correspondence.... Everyone has the right to the protection of the law against such interference or attacks.” The Human Rights Committee has stated that the term “home” is “to be understood to indicate the place where a person resides or carries out his usual occupation.” U.N. Human Rights Comm., General Comment No. 16, The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, U.N. Doc. HRI/GEN/1/Rev.6 at 142 (2003).

Petitioners if they are required to return to El Salvador to adjust their immigration status. The interpretation of the Statute at Issue adopted below — which, if upheld, would expose Petitioners and other similarly situated TPS recipients to that grave risk — simply cannot be reconciled with Congress’s objective in enacting the TPS statutory scheme. The decision below should therefore be reversed.

Respectfully submitted,

/s/

Rishi N. Zutshi

Counsel of Record

Lorena Michelen

Morgan A. Miller

CLEARY GOTTlieb STEEN

& HAMILTON LLP

One Liberty Plaza

New York, New York 10006

212-225-2000

rzutshi@cgsh.com

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